IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Poora Ram v. State of Rajasthan & Ors.

(1)S.B.CIVIL WRIT PETITION NO.4515/2006

Pabudan Singh v. State of Rajasthan & Ors.

(2)S.B.CIVIL WRIT PETITION NO.4516/2006

Petitions under Article 226 of the Constitution of India.

Date of Order :: 17th November, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. S.D.Vyas, for the petitioners.
Mr. K.L.Thakur, Additional Advocate General

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REPORTABLE

BY THE COURT :

These two petitions for writ raise a common question and will be governed by this common judgment. The facts leading up to these petitions may be shortly stated as under:-

The Superintendent of Police, Jodhpur by an order dated 9.2.2006 dismissed the petitioners from service on being found them consuming liquor at Police Station, Chopasani Housing Board, Jodhpur with an accused Jitendra Singh who was arrested in order to investigate a criminal case lodged against him for the offences under Sections 447, 427 and 379 IPC. While doing so the Superintendent of Police, Jodhpur dispensed with the requirement of holding regular disciplinary proceedings by invoking powers conferred by Rule 19(ii) of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958"). Rule 19(ii) of the Rules of 1958 is in confirmity to the provisions of proviso (b) to Article 311(2) of the Constitution of India that empowers a disciplinary authority to pass an appropriate order without affording a reasonable opportunity of hearing to an employee on being satisfied for the reasons to be recorded in writing that it shall not be reasonably practicable to follow the procedure prescribed to impose the penalty of dismissal, removal or reduction in rank. A challenge to the order dated 9.2.2006 is given by the petitioners by way of filing present petitions for writ on following grounds:-

(1)the reasons recorded in the order impugned dated 9.2.2006 to dispense with regular

proceedings are having no nexus to dispense with the inquiry; and

(2)the satisfaction of the disciplinary authority to dispense with the inquiry is not based on objective material.

A reply to the writ petition is filed by the respondents and entire record giving rise to the order dated 9.2.2006 is also placed before the Court for its examination.

It is the position admitted that the reasons to dispense with the inquiry are recorded in the order impugned itself and no reason beyond that is recorded elsewhere. According to the respondents one Shri Jitendra Singh was arrested in relation to a criminal case under investigation at Police Station, Chopasani Housing Board, Jodhpur and the petitioners with some other co-constables consumed liquor at Police Station with accused Jitendra Singh and also made quarrel with other officers of the police present at Police Station, Chopasani Housing Board, Jodhpur. The Superintendent of Police, Jodhpur, therefore, ordered for a preliminary inquiry and on being satisfied that it shall not be practicable to hold inquiry ordered for dismissal of the petitioner from service by order dated 9.2.2006. According to the respondents the petitioners committed a grave misconduct and that effected image of the police adversely in eyes of

public at large and that also shaken faith and confidence with the police, therefore, it was necessary to take immediate disciplinary action. Looking to such urgency the disciplinary authority chose to exercise special powers conferred upon him by Rule 19(ii) of the Rules of 1958.

Heard counsel for the parties and also examined the record produced by the respondents minutely.

From examination of record it reveals that in a daily news paper published from Jodhpur a news item appeared on 8.2.2006 with certain photographs reporting therein that during intervening night of 7th and 8th February, 2006 some of constables at Police Station, Chopasani Housing Board, Jodhpur forced one accused Jitendra Singh to consume liquor and on knowing about it a mob of people gathered at police station. On publication of news as above the Superintendent of Police, Jodhpur on 8.2.2006 instructed the Additional Superintendent of Police to hold a preliminary inquiry and to submit a report immediately. An order to place the petitioners under suspension was also passed on 8.2.2006. The Additional Superintendent of Police under the instructions of Superintendent of Police acted quite diligently and after recording statements of nine police personnels and Dr. D.L.Ranga, Incharge, Police Lines Dispensary,

submitted report of the preliminary inquiry to Superintendent of Police with a prima facie finding that constables Ranaram, Pabudan Singh, Girdhari Singh and Pooraram served and consumed liquor with accused Jitendra Singh at Police Station by misusing their office. The act of those constables has tarnished the image of police in eyes of people. The Superintendent of Police after considering the record and report of preliminary inquiry passed the order impugned dated 9.2.2006. The Superintendent of Police dispensed with the regular inquiry as prescribed under Rule 16 of the Rules of 1958 on following counts:-

> (1)the regular inquiry under Rule 16, if conducted, shall take long time to reach at its conclusion;
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> (2)the allegations against the delinquent constables are quite grave and if no immediate action is taken then confidence of the people with police will be shaken; and
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> (3)the allegations of misconduct are already proved against the delinquent employees during the preliminary inquiry.

Precisely, the issue requires determination in these petitions for writ is that whether the reasons recorded to invoke powers conferred by Rule 19 (ii) of the Rules of 1958 are sufficient to satisfy

the disciplinary authority that holding of an inquiry prescribed is not reasonably practicable.

It is well settled that satisfaction of the disciplinary authority for dispensing with the inquiry must be based on objective material and reasons. Such reasons should have nexus to dispense with the inquiry. The inquiry must not be dispensed with lightly or in order to avoid holding of regular inquiry on the ground that it will be time consuming or case against the delinquent government servant is weak. It is always required to be remembered that right to have reasonable opportunity for defence is a most valuable constitutional right available to a government servant and it is like a golden thread in service jurisprudence. All efforts must be made by competent authorities to adhere the valuable right given to civil servants under Article 311 of the Constitution of India and departure from it should not only be an exception but should be on rarest occasion. Hon'ble Supreme Court in the case of Union of India v. Tulsiram Patel, reported in AIR 1985 SC 1416, while dealing with the same issue, held as under:-

> “(para 130)The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311.

What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done feasible”. Webster's Third New International Dictionary defines the word “practicable” inter alia as meaning “possible to practice, done or accomplished: feasible”. Further, words used are not “not practicable” but “not reasonably practicable”. Webster's Third New International Dictionary defines the word “reasonably” as “in a reasonable manner : to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his

> family so that he is afraid to hold the inquiry or direct it to be held, it would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its powers of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

In view of the law laid down by Hon'ble Supreme Court in the case of Tulsiram Patel (supra) the

disciplinary authority before exercising special powers to dispense with the inquiry must satisfy on basis of objective material that holding of inquiry is not reasonably practicable and it means that in the opinion of a reasonable man by taking a reasonable view of prevailing situation it is not reasonably practicable to hold the inquiry.

In the instant matter from reading of the order impugned and from examination of record produced it is apparent that the disciplinary authority resorted to the powers prescribed under Rule 19(ii) of the Rules of 1958 on the ground that regular inquiry as prescribed under Rule 16 shall be time consuming for reaching at a conclusion and that will not only effect the image of police adversely but also shake confidence of people with police. The Superintendent of Police while resorting to special procedure prescribed under Rule 19(ii) of the Rules of 1958 has not at all satisfied himself that it is reasonably impracticable to hold an inquiry. The requirement of Article 311(2)(b) of the Constitution of India and Rule 19(ii) of the Rules of 1958 is that there must be such circumstances prevailing that may cause reasonably impracticable for the disciplinary authority to hold inquiry. The Superintendent of Police, Jodhpur while passing the order impugned dated 9.2.2006 nowhere found that holding of inquiry is reasonably impracticable. The sole anxiety of the disciplinary authority was to take

an immediate decision and for such immediate action the adherence of regular procedure being time consuming was dispensed with. An immediate decision in all matters including the disciplinary action against a government servant is always warranted and desired but not at the cost of violation of constitutional right of a citizen. As a matter of fact an expeditious decision by following all legal measures reflects competence of an officer and a decision by ignoring legal rights without just reason, as done in present cases, exposes the tendency of escapism existing with the officer concerned and that is always required to be deprecated. The right to have reasonable opportunity for defend cannot be sacrificed on the count that it will consume time and that will effect image of the government. More strange reason given to dispense with inquiry is the assumption of proving charge during preliminary inquiry. The preliminary inquiry is nothing but a course adopted to get satisfied that prima facie a charge of misconduct is made out against the employee and that requires a regular probe. Only on basis of the finding given in preliminary inquiry the requirement to afford a reasonable opportunity to defend cannot be denied to a civil servant. I do not find any just and valid reason in the present matters with the disciplinary authority to invoke the powers under Article 19(ii) of the Rules of 1958, as such the order impugned is bad in eye of law.

While holding the order impugned bad, I am aware that the petitioners are alleged with grave charge of misconduct and that requires an immediate disciplinary action. The Superintendent of Police, Jodhpur is absolutely right in considering that delay in such matters shall effect image of disciplined police force adversely and also shake the confidence of the people at large with the force. The Rules of 1958 take sufficient care for expeditious holding of inquiry. The Government of Rajasthan has also prescribed time schedule for departmental inquiry against the government officials and that is updated time to time. The time schedule prescribed by the Government of Rajasthan under Circular No.F.9(2)Karmik (A-III)70 dated 1.4.1985 reads as under:-

> "In case of departmental enquiries against Government officials under suspension, the following time schedule has been prescribed.-
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> | 1. | Completion of preliminary Enquiry and submission of its report to the Disciplinary Authority along with draft statements of allegations and charges. | 3 months |
> | 2. | Examination of Preliminary Enquiry Report and services of charge – sheet on the delinquents | 1 month |
> | 3. | Submission of Written Statements by the delinquents | Minimum 3 weeks Maximum 2 months |

4.	Examination of written statements and appointment of enquiry officer	2 months
5.	Completion of Departmental Enquiry	3 weeks
6.	Examination of Enquiry Report, and the final order	2 weeks.

Note. In case it is difficult to adhre to the aforesaid time schedule at any particular stage in a case, approval for extention of the limit in respect of any particular stage will be obtained from the Disciplinary Authority. In the event of any similar difficulties experienced by the Disciplinary Authority, it will obtain such approval from the next higher Authority."

The respondents have already completed a preliminary inquiry and on basis of that now definite charges of misconduct can very well be framed by the disciplinary authority to proceed further in accordance with law. Looking to all the facts of the case, the appropriate course before the respondents is to continue the petitioners under suspension with their attachment at Reserve Police Lines, Jodhpur and to proceed with inquiry.

In view of whatever discussed above, these petitions for writ deserve acceptance and, therefore, the same are allowed. The order impugned dated 9.2.2006 dismissing the petitioners from service is quashed. The petitioners shall be continued under suspension with their attachment at Police Lines,

Jodhpur in pursuant to the order dated 8.2.2006. An inquiry in accordance with law shall be initiated and completed against them expeditiously, as far as possible upto 31st March, 2007. The petitioners shall cooperate in holding of disciplinary proceedings against them. Till completion of the inquiry the suspension of the petitioners and their attachment with Reserve Police Lines shall not be revoked.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.